

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff(s),

**CASE NUMBER: 05-80025
HONORABLE VICTORIA A. ROBERTS**

v.

D-1 TIMOTHY DENNIS O'REILLY,

Defendant(s).

ORDER

On March 8, 2010, Timothy O'Reilly filed a 12.2 Notice: "The defendant will call experts who performed neurological examinations (EEG) of the defendant when he was approximately 8 and 9 years old."

On May 10, 2010, O'Reilly filed a Supplemental 12.2 Notice:

2. During the penalty phase, should one be required, witnesses for the defense may include school personnel, including teachers, administrators and special education, remedial reading, speech/language, and adapted physical education teachers, who had contact with Mr. O'Reilly and observed his learning and social difficulties in the school setting from pre-school until his graduation from High School.

4. Mr. O'Reilly may also call an expert in Special Education who has reviewed his school records and is familiar with Mr. O'Reilly's school system.

5. Mr. O'Reilly may also call a developmental pediatrician who examined Mr. O'Reilly during his childhood.

In an Order dated May 10, 2010, the Court gave O'Reilly until May 13, 2010 to

amend his original 12.2 Notice to include the kind of experts who performed the neurological examinations of O'Reilly.

On May 20, 2010, O'Reilly filed a "Belated Compliance with the Court's Order of May 10, 2010":

Counsel for the defendant became engaged in trial preparation matters, such as reviewing belatedly provided new discovery, interviewing witnesses, reviewing jury questionnaires and frankly, through excusable neglect did not comply with this directive.

The defendant will call a neurologist who reviewed EEG charts of Mr. O'Reilly.

Before the Court is the Government's "Motion to Strike Defendant's 12.2 Notice and Defendant's Supplemental 12.2 Notice." (Doc. #507). The Government asks the Court to exclude O'Reilly's expert mental health evidence from the penalty phase.

The Government's motion is **DENIED**. O'Reilly's Supplemental 12.2 Notice was timely, O'Reilly sought the Court's permission to file his Supplemental 12.2 Notice, and O'Reilly had a legitimate reason for his belated compliance with the Court's Order

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: June 3, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on June 3, 2010.

s/Carol A. Pinegar _____
Deputy Clerk